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BATASUNA BANNED: THE DISSOLUTION OF POLITICAL PARTIES UNDER THE EUROPEAN CONVENTION OF HUMAN RIGHTS

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Abstract: This Note reviews the history of Basque terrorism in Spain and the Spanish's government's recent decision to ban Batasuna, the political party affiliated with the militant group, ETA. Although Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms affords Spanish citizens the freedom of association, it recognizes Spain's need to protect its citizens from terrorist violence. This Note argues that the European Court of Human Rights, based on relevant case law, will most likely find that Batasuna's dissolution does not violate Article 11 because it is necessary and proportional to the end of protecting Spain's democratic system.

INTRODUCTION

Following the events of September 11, 2001, the international community has focused its collective attention on measures to minimize the threat of future acts of terror.¹ Spain, which has suffered separatist violence since its transition to democracy, has been no exception.² In its efforts to eliminate the dangers posed by the Basque militant group, ETA,³ the Spanish government has recently moved to outlaw the separatist party, Batasuna, which has long been considered

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¹ See *For Whom the Liberty Bell Tolls—Civil Liberties Since September 11th*, THE ECONOMIST, Aug. 31, 2002, at 5 [hereinafter *Civil Liberties*].

² Tim Golden, *Buoyed by World's Focus on Terror, Spain Cracks Down*, N.Y. TIMES, Aug. 29, 2002, at A8.

³ ETA is the Basque acronym for "Basque Homeland and Liberty." *Id.* The group's aim is the full independence of four northern Spanish provinces, three of them entirely Basque (Alava, Guipuzcua, and Vizcaya) and one only partially Basque (Navarra). ANTONIO VERCHER, *TERRORISM IN EUROPE* 168 (1992).

the terrorist group's political wing.⁴ While Batasuna is now pursuing judicial appeals in the Spanish courts, its case will most likely end up in the European Court of Human Rights (ECHR).⁵ Based on recent case law, the ECHR will most likely find that the Spanish government's dissolution of Batasuna is not a violation of its freedom of association under Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (Convention).⁶

Part I of this Note presents a brief account of the political history of the Basque region in the post-Franco era and a review of the Spanish government's recent actions against Batasuna. Part II discusses Article 11 of the Convention and the ECHR's approach to the dissolution of political parties in recent cases. Part III concludes that the ECHR will most likely find that Batasuna's dissolution does not violate Article 11.

I. HISTORY AND BACKGROUND

A. *Basque Nationalism in Post-Franco Spain*

Since democracy returned to Spain after General Francisco Franco's death in 1975, the Spanish government has generally followed a policy of accommodation with respect to the Basque nationalists.⁷ As a result, the autonomous region has amassed many powers of self-government, including control of police force, schools, and social welfare, with Spain ceding ample tax revenues.⁸ Nevertheless, autonomy policies have failed to stop separatist violence.⁹ As the most active militant group in Western Europe, ETA has been linked to over 800 deaths since 1968.¹⁰ President Jose Maria Aznar, who survived an ETA assassination attempt in 1995 shortly after taking office, has taken a hard line against violence and made only cursory attempts at negotia-

⁴ *Civil Liberties*, *supra* note 1. Batasuna has changed its name in the past few years from "Herri Batasuna" to "Euskal Herritarrok" and then to "Batasuna" to avoid bans. Emma Daly, *Judge Bans Basque Party, Linking It to Terrorists*, N.Y. TIMES, Aug. 27, 2002, at A4.

⁵ *Basque Party to Fight Ban*, BBC News, Aug. 28, 2002, at <http://news.bbc.co.uk/2/low/europe/2220931.stm>.

⁶ European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, art. 11, 213 U.N.T.S. 221, 232 [hereinafter Convention]. The Convention, as well as cases and materials of the ECHR and now-defunct European Commission on Human Rights (Commission), are available at <http://www.echr.coe.int>.

⁷ Golden, *supra* note 2.

⁸ *Id.*; see VICTOR PEREZ-DIAZ, SPAIN AT THE CROSSROADS 159 (1999).

⁹ Golden, *supra* note 2.

¹⁰ *Id.* ETA's victims have been primarily political opponents and members of the armed forces and police. See *id.*

tion.¹¹ Despite conciliatory efforts on both sides, however, murders and bombings persist.¹²

The Spanish government considers Batasuna an integral part of the terrorist problem because the party does not condemn ETA's actions and simultaneously denies any complicity.¹³ In addition, Spain contends that some individuals have concurrent membership in both ETA and Batasuna.¹⁴ In spite of the party's limited popular support in the region,¹⁵ Batasuna frequently makes a common cause with the moderate Basque nationalists, who control the regional parliament, thereby making it difficult for Spain to isolate the radicals who condone violence.¹⁶

B. *Spain's Dissolution of Batasuna*

President Aznar took advantage of the focus on terrorism following the events of September 11th by equating Basque radicals with Islamic fundamentalists and pressing European government to do more to fight terrorism in Spain.¹⁷ The European Union responded to his requests by officially listing ETA and Batasuna as terrorist organizations in December 2001 and June 2003, respectively.¹⁸

In addition to its international efforts, Spain took steps within its own borders when, in June 2002, its Parliament amended its Law of Political Parties to address organizations associated with terrorism.¹⁹ The revised Article 9 establishes that a party will be declared illegal when its "grave and continuous" activity "makes democratic principles

¹¹ *Id.*

¹² *Id.* ETA unilaterally declared a truce in September 1998, which it broke fifteen months later. PEREZ-DIAZ, *supra* note 8, at 170–72; Golden, *supra* note 2.

¹³ See *Batasuna Banned*, THE ECONOMIST, Aug. 31, 2002, at 13.

¹⁴ Daniel Trotta, *Spain Formally Asks Court to Ban Basque Party*, REUTERS, Sept. 3, 2002. In August 2002, the Spanish Justice Minister presented 23 charges—displayed in 26 boxes containing 1000 pieces of evidence—linking Batasuna with ETA and singling out 194 of the party's political leaders who belong to ETA. *Id.*

¹⁵ *Id.* Batasuna received only 10% of popular vote in 2001 regional elections (its worst showing ever), down from 18% in 1998. *Id.*; see *Batasuna Banned*, *supra* note 13.

¹⁶ Golden, *supra* note 2.

¹⁷ *Id.*

¹⁸ Council Regulation 2580/01 of 28 December 2001 on Specific Restrictive Measures Directed Against Persons and Entities with a View to Combating Terrorism, art. 2(3), 2001 O.J. (L 344) 2, available at <http://europa.eu.int>; *Justice and Home Affairs: EU Approves List of Terrorist Groups*, EUR. REP., Jan. 5, 2002; *EU Blacklists Basque Party*, BBC NEWS, June 5, 2003, at <http://news.bbc.co.uk/1/hi/world/europe/2965260.stm>.

¹⁹ Ley Orgánica de Partidos Políticos [Organic Law of Political Parties], (L.O.P.P. 2002, 12756), art. 9 (Spain), <http://www.elpais.es> [hereinafter Law of Political Parties].

vulnerable.”²⁰ Moreover, Article 9 provides that such actions by parliamentary or municipal party members can only give rise to illegalization through “repetition or accumulation.”²¹

Following an August 2002 vote, the Spanish Parliament asked the Supreme Court (Spain’s second highest tribunal) to dissolve Batasuna pursuant to the amended law.²² In March 2002, the Supreme Court’s sixteen member panel unanimously approved the government’s request for a permanent ban.²³ Batasuna appealed the Supreme Court’s decision to the Constitutional Court (Spain’s highest tribunal), which unanimously upheld the ban, citing the group’s “ideologies associated with terrorism and violence.”²⁴

C. Appeal to the ECHR

Batasuna has indicated that it will appeal the Constitutional Court’s decision to the ECHR, alleging a violation of its freedom of association under Article 11 of the Convention.²⁵ The ECHR has become the final court of appeal for citizens of most Western European nations and the Convention their “bill of rights.”²⁶ Spain, which has ratified the Convention, has formally accepted the ECHR jurisdiction

²⁰ *Id.* art. 9(2). Prohibited activities include:

promoting, justifying or excusing assaults against the life or the integrity of persons . . . inciting, bringing about or legitimizing violence as a means for the achievement of political objectives . . . politically complementing and helping the action of terrorist organizations for the achievement of their ends of subverting constitutional order or gravely altering public peace . . . giving express or tacit political support, legitimizing terrorist actions or excusing and minimizing their significance.

Id. art. 9(2)(a)–(c), (3)(a).

²¹ *Id.* art. 9(3).

²² Law of Political Parties, *supra* note 19, art. 11(1) (government must petition special session of Supreme Court); *id.* art. 10(5) (dissolution of political party reserved for special session of Supreme Court); Trotta, *supra* note 14.

²³ Law of Political Parties, *supra* note 19, art. 11(7); *Batasuna Banned Permanently*, BBC NEWS, Mar. 17, 2003, at <http://news.bbc.co.uk/1/hi/world/europe/2857437.stm>. On the same day as the parliamentary vote, Public Prosecutor Baltasar Garzon announced a three-year suspension of Batasuna, which immediately banned public rallies and demonstrations, closed offices, excluded party representatives from the following year’s elections, seized assets, and froze bank accounts (approximately \$23 million). Daly, *supra* note 4.

²⁴ *Constitutional Court Affirms that Batasuna Defends ‘Ideologies Associated with Terrorism,’* EL PAIS, Jan. 20, 2004, <http://www.elpais.es>.

²⁵ *Spain Maintains Basque Party Ban*, BBC NEWS, Jan. 26, 2004, at <http://news.bbc.co.uk/1/hi/world/europe/3405211.stm>.

²⁶ VERCHER, *supra* note 3, at 342–43; *The Power of Shame*, THE ECONOMIST, Dec. 5, 1998, at 5.

and the right of individuals to appeal to it once all appeals in their domestic courts are exhausted.²⁷

II. DISCUSSION

A. Article 11 of the Convention

Article 11(1) specifically addresses the dual freedoms of assembly and association: "Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests."²⁸ The freedom of association allows individuals to "come together for the protection of their interests by forming a collective entity which represents them."²⁹ Where those interests are political, "the function of Article 11 is central to the effective working of a democratic system" because associations serve to collect and spread ideas throughout society.³⁰

Although an association enjoys fundamental rights against the state, Article 11(2) allows the state to impose some restraints:

No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime . . . or for the protection of the rights and freedoms of others.³¹

Thus, state interference with Article 11(1) rights to freedom of association must find its justification under Article 11(2).³²

B. The ECHR's Approach to Alleged Article 11 Violations

When confronted with an alleged violation of Article 11, the ECHR employs a two-tiered approach.³³ It first considers whether the

²⁷ Convention, *supra* note 6, arts. 32, 35. Spain ratified the Convention on Oct. 4, 1979. Dates of Ratifications, at <http://www.echr.coe.int/Eng/EDocs/DatesOfRatifications.html> (n.d.).

²⁸ Convention, *supra* note 6, art. 11(1).

²⁹ D.J. HARRIS ET AL., LAW OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS 421 (1995).

³⁰ *Id.* at 417.

³¹ Convention, *supra* note 6, art. 11(2).

³² HARRIS, *supra* note 29, at 424.

³³ *United Communist Party v. Turkey*, App. No. 19392/92, 26 Eur. H.R. Rep. 121, 146 (1998) (Eur. Ct. H.R.).

state interfered with the petitioner's freedom of association.³⁴ If the answer to that question is yes, the ECHR then inquires as to whether that interference was justified under Article 11(2).³⁵

The initial question of interference is a relatively obvious one for the ECHR to answer because a political party is protected under Article 11(1) and its dissolution necessarily impinges on its members' right to associate for the furtherance of their economic, social, or cultural interests.³⁶ Despite the express reference to trade unions in Article 11(1), the ECHR has long read the provision broadly to include political parties.³⁷ To ensure that the association right is "practical and effective," the Convention guarantees that a political party has the right to freely carry out activities after its formation.³⁸

Moving to the multifaceted issue of whether the interference was justified, a state must show that its action (1) is prescribed by law, (2) has a legitimate aim, and (3) is necessary in a democratic society.³⁹ With respect to the first requirement, the ECHR has held that a state must make two showings: (1) that the law in question is "adequately accessible"; and (2) that the norm is "formulated with sufficient precision to enable the citizen to regulate his conduct."⁴⁰ Thus, the ECHR requires the persons concerned to have been aware of the scope of the law's application and reasonably foresee the consequences of their actions.⁴¹

The ECHR then tests the government's motivations for imposing the interference by inquiring whether the government pursued at least one of the legitimate aims set out in Article 11(2).⁴² The ECHR will thus consider ensuring national security, public safety, and territorial integrity, preventing disorder and crime, and protecting the rights and freedoms of others as legitimate governmental goals.⁴³

³⁴ *Id.*

³⁵ *Id.*

³⁶ HARRIS, *supra* note 29, at 417, 421.

³⁷ *United Communist Party*, 26 Eur. H.R. Rep. at 132 (citing German Communist Party v. Germany, App. No. 250/57, 1957 Y.B. Eur. Conv. on H.R. 222 (Eur. Comm'n on H.R.)).

³⁸ *United Communist Party*, 26 Eur. H.R. Rep. at 145.

³⁹ *Id.* at 146-47; see Convention, *supra* note 6, art. 11(2).

⁴⁰ *Sunday Times v. United Kingdom*, 2 Eur. H.R. Rep. 245, 271 (1980) (Eur. Ct. H.R.).

⁴¹ *Purcell v. Ireland*, App. No. 15404/89, 1991 Y.B. Eur. Conv. on H.R. 90, 99 (Eur. Comm'n on H.R.).

⁴² *United Communist Party*, 26 Eur. H.R. Rep. at 146; see Convention, *supra* note 6, art. 11(2).

⁴³ *United Communist Party*, 26 Eur. H.R. Rep. at 146.

The final and most difficult issue for the ECHR's consideration is that of the necessity of the interference in a democratic society.⁴⁴ The ECHR has stated that "notwithstanding its autonomous role and particular sphere of application, Article 11 must . . . be considered in light of Article 10," which guarantees freedom of expression.⁴⁵ The ECHR justifies the merger of these two articles on the grounds that protecting opinions and the freedom to express them is one of the objectives of the freedom of association.⁴⁶ The state, as the ultimate guarantor of pluralism, has an obligation to hold free elections under conditions that will ensure the free expression of opinions vis-à-vis the voters' choice of the legislature.⁴⁷ The expression of voter preference would be "inconceivable without the participation of a plurality of political parties representing the different shades of opinion to be found within a country's population."⁴⁸ Thus, political parties make an "irreplaceable contribution to political debate."⁴⁹

The adjective "necessary" does not mean "indispensable" or merely "reasonable"; instead, it "implies the existence of a 'pressing social need.'"⁵⁰ Consequently, the ECHR strictly construes the exceptions set out in Article 11(2) and will only accept "compelling and convincing" reasons to justify restrictions on political parties' freedom of association.⁵¹ The ECHR does not substitute its own view for that of the national authorities; rather, it looks at the interference in light of the case as a whole in order to determine whether it corresponds to "a pressing social need," is "proportionate to the legitimate aimed pursued," and whether the state's justifications are "relevant and sufficient."⁵² In order to find in favor of the state, the ECHR must "satisfy itself that the national authorities applied standards which were in conformity with

⁴⁴ See *id.* at 147.

⁴⁵ *Id.* Article 10(1) provides that the right to freedom of expression "shall include freedom to hold opinions and receive and impart information and ideas without interference by public authority and regardless of frontiers" Convention, *supra* note 6, art. 10(1).

⁴⁶ *United Communist Party*, 26 Eur. H.R. Rep. at 147 (citing *Young, James & Webster v. United Kingdom*, 4 Eur. H.R. Rep. 38, 55 (1982); *Vogt v. Germany*, 21 Eur. H.R. Rep. 205, 240. (1996)).

⁴⁷ *United Communist Party*, 26 Eur. H.R. Rep. at 147-48.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Sunday Times v. United Kingdom*, 2 Eur. H.R. Rep. 245, 275 (1980) (Eur. Ct. H.R.) (citing *Handyside v. United Kingdom*, 1 Eur. H.R. Rep. 737, 754 (1979) (Eur. Ct. H.R.)).

⁵¹ *United Communist Party*, 26 Eur. H.R. Rep. at 149.

⁵² *Id.*

principles embodied in Article 11 . . . and that they based their decisions on an acceptable assessment of the relevant facts.”⁵³

In keeping with its supervisory role, the ECHR affords a “margin of appreciation” to the national authorities, which slightly mitigates this otherwise strict test.⁵⁴ The scope of this deference is narrow where the nature of legitimate aim finds significant common ground among the laws of the contracting states because national authorities are not necessarily in a more informed position than the ECHR.⁵⁵ In the context of dissolution of a political party, the indispensability of pluralism in a democracy further justifies the narrow margin of appreciation left to states.⁵⁶

C. Recent ECHR Decisions Involving the Dissolution of Political Parties

The ECHR has strictly construed exceptions to Article 11 with respect to political parties mostly because of their fundamental role in democracy.⁵⁷ The ECHR has thus viewed party dissolution as a “drastic measure” to be applied “only in the most serious cases.”⁵⁸ The ECHR has held that a political party may campaign for a change in law provided the means used to that end are legal and the change proposed is compatible with democratic principles.⁵⁹ However, if in trying to change the law a party’s leaders incite recourse to violence or propose a policy that either: (1) does not comply with the rules of democracy, (2) aims to destroy democratic order, or (3) seeks to infringe upon the freedoms of others, the party then “cannot lay claim to the protection of the Convention.”⁶⁰

In *United Communist Party v. Turkey*, the ECHR unanimously held that the Turkish government violated Article 11 by dissolving the United Communist Party, whose name and references to Kurdish

⁵³ *Id.*

⁵⁴ Gregory H. Fox & Georg Nolte, *Intolerant Democracies*, 36 HARV. INT’L L.J. 1, 48 (1995).

⁵⁵ *Sunday Times*, 2 Eur. H.R. Rep. at 276. *But see* X v. United Kingdom, App. No. 3898/68, 1970 Y.B. Eur. Conv. on H.R. 666, 684 (allowing considerable measure of discretion to domestic authorities where aim is prevention of disorder and crime).

⁵⁶ *Refah Partisi (Welfare Party) v. Turkey*, App. Nos. 41340, 42–44/98, 35 Eur. H.R. Rep. 3, 91 (2002) (Eur. Ct. H.R.).

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.* at 78–79.

⁶⁰ *Id.*

“people” and “nation” in its program violated Turkish law.⁶¹ The ECHR ruled that there was no justification for hindering a political group simply because it sought to debate a controversial issue and take part in national political life.⁶² The ECHR acknowledged that the party’s program may have concealed objectives different from the ones it proclaimed; however, since the party was dissolved shortly after its formation, it had no opportunity to take any action.⁶³ The ECHR concluded that, absent any activity by the United Communist Party, it could not consider the party a terrorist organization.⁶⁴

Conversely, in a four to three vote, the ECHR held in *Welfare Party v. Turkey* that Turkey did not violate Article 11 by dissolving a political party that advocated a multijudicial system—with Islamic law applying exclusively to the Muslim community—and whose members made reference to a *jihad* as a political means.⁶⁵ The ECHR found that a multijudicial system would create discrimination between individuals based on religion, which is inconsistent with democratic principles under the Convention.⁶⁶ Moreover, the fact that Welfare Party leaders neither clarified nor contradicted reports that some party members might resort to force posed a considerable risk to public order.⁶⁷ Turkey’s Constitutional Court dissolved the Welfare Party and then temporarily deprived the five offending members of their parliamentary offices; the remaining 152 party members—a third of the Turkish Grand National Assembly⁶⁸—continued in their seats and were able to pursue their political careers.⁶⁹ The ECHR held that this interference was not “disproportionate to the legitimate aims pursued” relative to the “pressing so-

⁶¹ *United Communist Party v. Turkey*, App. No. 19392/92, 26 Eur. H.R. Rep. 121, 125–27 (1998) (Eur. Ct. H.R.).

⁶² *Id.* at 154.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Welfare Party*, 35 Eur. H.R. Rep. at 91. In its primary meaning, *jihad* is defined as “a holy war and the battle which has to be fought until the total domination of society by the Muslim religion is achieved.” *Id.* at 88.

⁶⁶ *Id.* at 85–86; see Convention, *supra* note 6, art. 14 (prohibiting discrimination).

⁶⁷ *Welfare Party*, 35 Eur. H.R. Rep. at 88–89. The dissenters felt that there was no “compelling or convincing evidence . . . that the party . . . took any steps to reali[z]e political aims, . . . to destroy or undermine secular society, to engage in or encourage acts of violence or religious hatred, or otherwise to pose a threat to legal and democratic order.” *Id.* at 105.

⁶⁸ *Id.* at 89.

⁶⁹ *Id.* at 91.

cial need" that it answered.⁷⁰ Moreover, the reasons adduced to justify the dissolution of the party were "relevant and sufficient."⁷¹

Most recently, in *People's Labour Party v. Turkey*, the ECHR unanimously held that the principles for which the party stood, such as self-determination and recognition of language rights, were not contrary to the fundamental principles of democracy.⁷² The ECHR reasoned that if advocating such principles constituted supporting terrorism, the possibility of dealing with related questions within the framework of democratic debate would be diminished.⁷³ Armed movements would then monopolize popular support for the party's principles, which would be at odds with the democratic ideals of Article 11.⁷⁴ Although the People's Labour Party severely criticized certain actions of the Turkish armed forces in its antiterrorist campaign, such comments did not constitute evidence that the party was equated with the terrorist groups.⁷⁵ Given the wide limits of permissible criticism of government,⁷⁶ the ECHR held that the party's condemnation of the Turkish armed forces was merely drawing attention to its constituents' concerns.⁷⁷ Because the People's Labour Party had not advocated any policy that could have undermined the democratic regime and had not urged or sought to justify recourse to force for political ends, its dissolution could not reasonably be considered to correspond to a "pressing social need."⁷⁸

III. ANALYSIS

Should Batasuna's case reach the ECHR, the party's dissolution will be subjected to the two-tiered test applied in the previous cases.⁷⁹ The ECHR will almost certainly find that Spain interfered with Batasuna's freedom of association.⁸⁰ Moreover, it will probably find that

⁷⁰ *Id.*

⁷¹ *Welfare Party*, 35 Eur. H.R. Rep. at 91.

⁷² *Yazar, Karatas, Askoy & People's Labour Party v. Turkey*, App. Nos. 22723-25/93, 36 Eur. H.R. Rep. 6, 76 (2003) (Eur. Ct. H.R.).

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.* at 75.

⁷⁶ *Castells v. Spain*, App. No. 11798/85, 14 Eur. H.R. Rep. 445, 477 (1992) (Eur. Ct. H.R.) (upholding Basque parliament member's published criticism of Spain's antiterrorist campaign).

⁷⁷ *People's Labour Party*, 36 Eur. H.R. Rep. at 77.

⁷⁸ *Id.*

⁷⁹ *See United Communist Party v. Turkey*, App. No. 19392/92, 26 Eur. H.R. Rep. 121, 146 (1998) (Eur. Ct. H.R.).

⁸⁰ *See id.*

such interference was prescribed by law and pursuant to a legitimate aim, leaving the ECHR to address the most difficult question of whether Spain's dissolution of Batasuna is "necessary in a democratic society."⁸¹ In other words, does the ban correspond to a "pressing social need," is it "proportionate to the legitimate aim pursued," and are Spain's justifications "relevant and sufficient"?⁸²

Spain will likely offer as evidence public acts by Batasuna officials during the summer of 2002 that it believes demonstrate the party's endorsement—both tacit and active—of violence as a means for political ends.⁸³ For example: elected Batasuna officials did not condemn fatal bombings and refused to participate in efforts to help the bombing victims and their families; a spokesperson reportedly stated that the party "does not wish that ETA stops killing"; another spokesperson claimed that the amended Law of Political Parties expressly justifies and legitimizes terrorist action for the achievement of political ends; the same spokesperson held President Aznar responsible for past and future acts of violence and suggested that terrorist acts would cease if the efforts to ban Batasuna ended; Batasuna officials publicly praised imprisoned terrorists, calling them "political prisoners," and led public homages to dead militants; and ETA militants with criminal records have formed part of Batasuna's directive organs, electoral lists, and municipal and parliamentary groups.⁸⁴

Convention case law indicates that political speech supporting terrorism does not merit protection under the Convention; therefore, the ECHR will most likely find that Spain was responding to a "pressing social need" when it banned Batasuna due to its officials' statements actively supporting violence and their concurrent membership with ETA.⁸⁵ In *Purcell v. Ireland*, the European Commission of Human Rights upheld restrictions placed upon the broadcast of live interviews with members of Sinn Féin—which is considered the Irish Republican Army's political wing—in part because "the defeat of terrorism is a public interest of the first importance."⁸⁶ For the Commission, denying po-

⁸¹ See *id.* at 146–49.

⁸² *Id.*

⁸³ See generally *Sentence of the Supreme Court Banning Batasuna*, EL PAIS, <http://www.el-pais.es> (n.d.) (cataloguing Batasuna's alleged violations of the Law of Political Parties).

⁸⁴ *Id.*

⁸⁵ See Anthony Lester, *Freedom of Expression*, in *THE EUROPEAN SYSTEM FOR THE PROTECTION OF HUMAN RIGHTS* 473 (R.St.J. Macdonald et al. eds., 1993).

⁸⁶ *Purcell*, 1991 Y.B. Eur. Conv. on H.R. at 101. Before 1999, the Commission determined the preliminary question of admissibility and drew up a report for the ECHR establishing the facts and expressing an opinion on the merits of the case; the Commission was

litical supporters of terrorist organizations the use of broadcast media as “a platform for advocating their cause, encouraging support . . . , and conveying the impression of legitimacy” was “necessary in a democratic society.”⁸⁷ The ECHR will most likely consider Spain’s dissolution of Batasuna as corresponding to a “pressing social need” due to the importance placed on the defeat of terrorism.⁸⁸

The ECHR will also probably consider Batasuna officials’ public statements and concurrent membership with ETA as “relevant and sufficient” evidence of the party’s active support of violence to achieve political ends, thereby justifying Spain’s interference.⁸⁹ In response, Batasuna may argue that its official program identifies it as a democratic association dedicated to dialogue and negotiation.⁹⁰ However, this fact is not dispositive because the ECHR will compare the program with the actions of the party in an effort to expose hidden objectives.⁹¹ Spain’s proof of Batasuna’s actions in the context of Basque separatist violence is similar to evidence that the Commission deemed sufficient to justify the ban on Sinn Féin’s statements in *Purcell*.⁹² Moreover, just as the Welfare Party failed to clarify its members’ *jihad* statements, Batasuna has not publicly distanced itself from, nor offered benign interpretations of, its officials’ statements and actions supporting political violence.⁹³ Finally, concurrent membership of a substantial number of persons in both Batasuna and ETA is overwhelming evidence that equates them as associations seeking to undermine democracy by achieving political ends through violent means.⁹⁴

While speech actively supporting terrorism is not protected, the Convention does not compel political actors to condemn violence.⁹⁵ Therefore, the ECHR will most likely not uphold Spain’s prohibition

subsequently collapsed into the ECHR. Convention, *supra* note 6, Protocol No. 11 (entered into force Nov. 1, 1998).

⁸⁷ *Purcell*, 1991 Y.B. Eur. Conv. on H.R. at 102.

⁸⁸ *See id.*

⁸⁹ *See Welfare Party v. Turkey*, App. Nos. 41340, 42–44/98, 35 Eur. H.R. Rep. 3, 91 (2002) (Eur. Ct. H.R.).

⁹⁰ *See Basic Principles for Democracy in the Basque Country* (2.1), Ideological Bases, at http://www.batasuna.org/batasuna/g_index.htm (last modified June 23, 2001).

⁹¹ *See United Communist Party v. Turkey*, App. No. 19392/92, 26 Eur. H.R. Rep. 121, 154 (1998) (Eur. Ct. H.R.).

⁹² *See generally Purcell*, 1991 Y.B. Eur. Conv. on H.R. 90.

⁹³ *See Welfare Party*, 35 Eur. H.R. Rep. at 88–89.

⁹⁴ *See Purcell*, 1991 Y.B. Eur. Conv. on H.R. at 100.

⁹⁵ *See Goodwin v. United Kingdom*, App. No. 17488/90, 22 Eur. H.R. Rep. 123, 146 (1996) (Eur. Ct. H.R.) (compelling journalist to reveal source is a breach of negative right).

of “tacit” support of ETA on the grounds that it constitutes protected negative speech.⁹⁶ Moreover, even though silence in this context might have some political significance, it does not suffice as “compelling and convincing” evidence that Batasuna supports terrorism.⁹⁷

Batasuna’s situation is not like that of the United Communist Party or the People’s Labour Party because Batasuna officials are not merely seeking to debate a controversial political matter or criticizing governmental action.⁹⁸ Instead, by advocating violence or, at the very least, not excluding the possibility of violent means to achieve political goals, Batasuna is not complying with the democratic ideal underlying the Convention.⁹⁹ Like the Welfare Party members’ support of a *jihad* and Sinn Fein’s advocacy of terrorism, Batasuna’s statements cause a substantial risk to public order.¹⁰⁰ While Batasuna does not have nearly the same power or influence as the Welfare Party when it was dissolved, the dangers to public order are nevertheless “tangible” and “immediate” due to the long history of separatist violence in Spain.¹⁰¹

Because dissolution must be proportional to the aim pursued, the ECHR will accept such a drastic measure in only the most serious cases of a “pressing social need.”¹⁰² Two factors the ECHR will consider when assessing proportionality are the nature and severity of the interference.¹⁰³ Both the Spanish government’s act of permanent dissolution and Judge Garzon’s temporary suspension allow Batasuna’s seven parliamentary members and dozens of local councilors to serve out their terms in elected office.¹⁰⁴ The Law of Political Parties does not impose criminal penalties on pre-ban members nor does it preclude them from future political activity; however, such members may not participate in the following year’s elections under the banner of Batasuna or any party that replaces it in an effort to get around the law.¹⁰⁵ After dissolving the Welfare Party, Turkey temporarily banned

⁹⁶ See *id.*

⁹⁷ See Yazar, Karatas, Askoy & People’s Labour Party v. Turkey, App. Nos. 22723–25/93, 36 Eur. H.R. Rep. 6, 77 (2003) (Eur. Ct. H.R.); United Communist Party v. Turkey, App. No. 19392/92, 26 Eur. H.R. Rep. 121, 154 (1998) (Eur. Ct. H.R.).

⁹⁸ See *id.*

⁹⁹ See Welfare Party v. Turkey, App. Nos. 41340, 42–44/98, 35 Eur. H.R. Rep. 3, 89 (2002) (Eur. Ct. H.R.).

¹⁰⁰ See *id.*; Purcell v. Ireland, App. No. 15404/89, 1991 Y.B. Eur. Conv. on H.R. 90, 100. (Eur. Comm’n on H.R.).

¹⁰¹ See *Welfare Party*, 35 Eur. H.R. Rep. at 89.

¹⁰² *Id.* at 91.

¹⁰³ *Id.*

¹⁰⁴ See Law of Political Parties, *supra* note 19, art. 12.

¹⁰⁵ See *id.*

five of its members from any official political activity for their egregious conduct, which the ECHR deemed proportionate to the “pressing social need.”¹⁰⁶ Since Spain’s interference is less severe than Turkey’s, its dissolution of Batasuna without individual penalties for its members would likewise not violate Article 11.¹⁰⁷

Some international commentators have criticized Spain’s total and permanent dissolution as too extreme and have suggested that provisions holding individuals personally liable for injuries resulting from public demonstrations and/or denying Batasuna public-financed political party funds would have been more appropriate.¹⁰⁸ In addition, some point out—as the *People’s Labour Party* court did—that violence will intensify in the “political vacuum” left by the party’s dissolution.¹⁰⁹ With the exception of Turkey, other Western European countries generally have not resorted to the dissolution of political parties out of fear of escalating violence.¹¹⁰ In *Purcell*, the Commission noted that Sinn Fein could have been outlawed under Irish law; however, the decision not to dissolve the party was “a matter of policy which is alone for the Irish Government to determine.”¹¹¹ The fact that more countries have not dissolved parties linked to violence might represent policy decisions having little to do with the legality of such a measure.¹¹² The *Welfare Party* court cited a state’s narrow margin of appreciation to “reasonably forestall” the dissolution of a political party before implementing it and creating additional risks to civil peace.¹¹³ Therefore, just because Spain did not ban Batasuna earlier, that decision does not preclude its ability to do so now.¹¹⁴ Dissolution represents Spain’s latest strategy in its long and difficult history of dealing with separatist violence.¹¹⁵ Such policy decisions will most likely fall within the narrow margin of appreciation given to national authorities.¹¹⁶ The ECHR may invoke the margin of appreciation as it

¹⁰⁶ See *Welfare Party*, 35 Eur. H.R. Rep. at 91.

¹⁰⁷ See *id.*

¹⁰⁸ *Batasuna Banned*, *supra* note 13.

¹⁰⁹ *Europe Wary of Banning Parties*, BBC NEWS, Aug. 28, 2002 at <http://news.bbc.co.uk/2/low/europe/2217919.stm> [hereinafter *Europe Wary*].

¹¹⁰ See Yazar, Karatas, Askoy & *People’s Labour Party v. Turkey*, App. Nos. 22723–25/93, 36 Eur. H.R. Rep. 6, 75 (Eur. Ct. H.R.); *Europe Wary*, *supra* note 109.

¹¹¹ *Purcell*, 1991 Y.B. Eur. Conv. on H.R. at 100.

¹¹² See *id.*; *Europe Wary*, *supra* note 109.

¹¹³ *Welfare Party*, 35 Eur. H.R. Rep. at 91.

¹¹⁴ See *id.*

¹¹⁵ *Golden*, *supra* note 2.

¹¹⁶ *Welfare Party*, 35 Eur. H.R. Rep. at 91.

did in *Welfare Party* to decide in favor of Spain in this close case involving the difficult question of party dissolution.¹¹⁷

CONCLUSION

The ECHR will most likely find that Spain's dissolution of Batasuna does not violate Article 11 of the Convention because the measure is "necessary in a democratic society" given the primary importance of fighting terrorism. Moreover, there is relevant and sufficient evidence showing Batasuna's support of political violence and links to ETA, and the ban is proportional to Spain's pressing social need of protecting its democratic system and citizens from terrorist violence.

¹¹⁷ See *id.*